

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY DEPUTY

UNITED STATES OF AMERICA §
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V. §
 §
ALEJANDRO MUNOZ-CASTELAN (01) §
JUAN CARLOS §
ZAYAGO-CASTELAN (02) §
RIGOBERTO ORTEGA-CASTELAN (03) §
RAFAEL FLORES-LEON (04) §
FELIPE ZAYAGO-CASTELAN (05) §

CRIM. NO. 1:19-CR-061-LY

ORDER ON DEFENDANTS' MOTIONS TO SUPPRESS

Before the court are Defendants' Motions to Suppress filed April 19, 2019 (Doc. ##40, 41, 42, 43, 44) and Government's Response to Defendants' Motions to Suppress filed May 2, 2019 (Doc. #47). The court conducted a hearing on the motions to suppress on May 9, 2019. Having considered the motions and response, the evidence presented at the hearing, and the arguments of counsel, the court will deny the motions for the reasons to follow.

Factual Summary

On November 3, 2018 Travis County Deputy Curtis Kelly responded to a call from a homeowner in Travis County outside Elgin, Texas that her home had been hit by shotgun pellets by bird hunters on an adjacent property. Kelly met with the caller who pointed out the area where the hunters were firing. Kelly drove closer to the hunters and observed several vehicles in the driveway of the property identified by the homeowner.

Kelly found seven individuals on the property, all of whom were carrying shotguns. Because none of the individuals spoke English, Kelly called for assistance. Travis County Deputy Luis Garcia to translate. The deputies determined that only one of the individuals possessed a hunting

license; therefore, they called for a game warden. Texas Parks and Wildlife informed the deputies that a game warden would not be available immediately because it was the first day of deer hunting season, so the deputies moved all the individuals to the driveway of a residence on the property to wait for the warden and continue with their investigation.

While they waited for the game warden to arrive, Kelly and Garcia secured all the firearms and ran computer checks to determine the status of the firearms. They also ran a CAD check to verify the owners of the two properties involved in the incident and to determine whether the individuals had a right to be on the property. Finally, they ran criminal-history checks on all the individuals.

The game warden arrived about an one hour and fifteen minutes after he was called; he arrived six minutes after the Kelly and Garcia completed their investigation. Upon arrival, Texas Game Warden Turk Jones, who documented his investigation by digital recording, began inventorying and assessing the firearms, hunting bags, and birds. Jones found a total of 33 dead birds—13 pigeons, five Eurasian collared doves, one white-winged dove, and 14 mourning doves. With the assistance of Kelly and Garcia, Jones affixed evidence-seizure tags to each firearm and hunting bag. Jones issued various citations to all seven individuals and seized the firearms, ammunition, and birds, after which all the individuals were released. Jones subsequently transferred custody of five firearms and four hunting bags containing 392 rounds of various gauge ammunition, 249 spent shot shell casings, miscellaneous ammunition components, and gun cleaning supplies to the Government, along with the original copies of the citations issued by Jones and two discs containing Jones's audio and video recordings with the individuals on November 3, 2018.

On February 12, 2019, U.S. Immigration and Customs Enforcement (“ICE”) determined that of the seven individuals the five named Defendants were residents and citizens of Mexico with no record that any Defendant was admitted, inspected, or paroled into the United States by an Immigration Officer. A sixth individual was found to be a lawful permanent resident. A seventh individual was a juvenile. Forensic analysis also determined that all of the firearms seized were capable of expelling a projectile by the action of an explosion and had been manufactured outside the State of Texas. The five named Defendants were charged subsequently in a one-count indictment for possession of a firearm by an illegal alien in violation of Section 922(g)(5)(a) of Title 18 of the United States Code.

In their motion to suppress, Defendants argue that the Government cannot meet its burden to show that the deputies’ warrantless entry onto private property was justified under exigent circumstance, or that the seizure and prolonged detention of Defendants without reasonable suspicion or probable cause was lawful.

Open-Field Entry

Defendants assert that no exigent circumstances existed to justify the deputies’ warrantless entry onto private property. *See United States v. Rico*, 51 F.3d 495, 500–01 (5th Cir. 1995). Because it is not a crime to discharge a shotgun outside of the city limits, Defendants argue, the deputies had no reasonable basis to suspect a crime was committed to warrant entry onto private property.

In response, the Government asserts that because the deputies were responding to a call that shots had been fired and a house had been hit by pellets, exigent circumstances existed that justified the deputies’ entry onto the property to investigate the call and to ensure that no further violations occurred. *See Tamez v. City of San Marcos*, 118 F.3d 185, 1095–97 (5th Cir. 1997). In addition,

the Government argues that the deputies entry onto an open field, rather than a residence, did not constitute an unreasonable search under the Fourth Amendment of the U.S. Constitution. *See United States v. Dunn*, 480 U.S. 294, 303–04 (1987) (citing *Oliver v. United States*, 466 U.S. 170, 177 (1984)). The court agrees. “[T]he correct inquiry is whether the government’s intrusion infringes upon the personal and societal values protected by the Fourth Amendment [W]e find no basis for concluding that a police inspection of open fields accomplishes such an infringement.” *Oliver v. United States*, 466 U.S. at 182–83.

Temporary Detention

Defendants assert that being detained for over an hour until the game warden arrived violated the Fourth Amendment because the detention extended beyond its valid purpose to complete a brief investigation of a possible violation. *See United States v. Machuca-Barrera*, 261 F.3d 425, 432 (5th Cir. 2001). In response, the Government argues that Defendants’ detention was not unreasonable under the totality of the circumstances because the deputies’ investigation continued until just six minutes before the game warden arrived. *See United States v. Powell*, 732 F.3d 361, 369 (5th Cir. 2013). The Government further argues that although Defendants were not arrested while on the property they had probable cause to arrest Defendants under Section 22.05 of the Texas Penal Code, but chose not to do so in light of the game warden’s actions. The court agrees.

Game Warden’s Statutory Obligations

At the hearing, counsel for Defendants argued that pursuant to Section 12.103 of the Texas Parks and Wildlife Code, Jones was not authorized to turn over Defendants’ firearms to ICE. The court finds that section 12.103 does not prohibit a Texas game warden from turning over firearms


seized under an applicable state statute if so requested by ICE or federal prosecutors. Therefore, the court will deny the motions to suppress.

Conclusion

The court concludes that based on the totality of the circumstances, the deputies had reasonable suspicion to enter an open field on private property and to detain Defendants for further investigation based on probable cause until the game warden arrived.

IT IS THEREFORE ORDERED that Defendants' Motions to Suppress filed April 19, 2019 (Doc. ##40, 41, 42, 43, 44) are **DENIED**.

SIGNED this 10th day of May, 2019.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE